

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on September 21, 2010, Claims 1-6 and 9-22 were rejected under 35 U.S.C. 112, first paragraph for failing to comply with the written description requirement; Claims 1-6 and 9-22 were rejected under 50 U.S.C. 103(a) as being unpatentable over Siefert in view of Pellegrino. Applicant respectfully provides the following:

Rejections under 35 U.S.C. § 112, First Paragraph:

M.P.E.P. § 2163 summarizes the applicable standard from court decisions concerning the written description requirement. It indicates that there is no *in haec verba* requirement (i.e. there is no requirement that the claim limitation be word-for-word what is contained in the specification), and that it is sufficient for claim limitations to be supported through “express, implicit, or inherent disclosure.” Thus, as set forth in M.P.E.P. § 2163, the requirement is satisfied if the patent specification describes the claimed invention “in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.” Applicant(s) respectfully submit(s) that the rejected claim language satisfies this requirement.

Specifically, the rejected claim language from the claims “using streaming media separate from a student curriculum” is supported by the specification as filed. The specification clearly states that “after an instructor proceeds through a unit of professional development training, 10, the instructor may take a self-assessment examination to determine whether or not

the training has been comprehended and integrated. When the instructor is satisfied with his or her comprehension of each training unit, the instructor may access an online lesson plan development plan matrix 18 that guides the instructor through the creation of lesson plans.” Specification, pg. 10, lines 5-10. Accordingly, in the non-limiting example provided on page 10 of the specification, an instructor utilizes online training materials through a streaming media, prior in time to accessing an online lesson plan development matrix. Accordingly, in the non-limiting example provided on page 10, the training materials utilize streaming media separate from the student curriculum. Additionally, the specification provides a non-limiting example on page 11 wherein the professional development training system is utilized for a private or public entity training, “for example, the Occupational Safety and Health Administration (OSHA) or similar federally mandated safety training entity, may be taught using the embodiments of the present invention herein described. Specifically, instructors or trainees may be trained online through video/DVD capabilities of the present invention, and personal assessment may be used to determine whether or not concepts have been comprehended.” Specification, pg. 11, lines 18-23. Accordingly, the specification provides non-limiting examples in which training materials using streaming material are provided independent from and not in conjunction with student curriculum. One of skill in the art would readily recognize that Applicant had possession of the invention as claimed from this disclosure. Accordingly, Applicant respectfully requests that the Section 112 rejections be withdrawn at this time.

Rejections under 35 U.S.C. § 130(a):

M.P.E.P. § 2141 sets forth the *Graham* factual enquiries that should be considered when making an obviousness rejection under Section 103: 1) ascertaining the scope and content of the prior art; 2) ascertaining the differences between the claimed invention and the prior art; and 3) resolving the level of ordinary skill in the pertinent art. (Citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).) In addition, M.P.E.P. §§ 2141 and 2142 set forth that “the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” (Citing *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. ___, 82 USPQ2d 1385 (2007).)

For a rejection under Section 103 to stand, it must explicitly set forth 1) factual findings showing that each claim element was known in the art at the time of the invention, and 2) factual findings showing that one of ordinary skill in the art, at the time of the invention, would have found it obvious to modify or combine the teachings to arrive at the claimed invention. (See, for example, the enumerated required articulations set forth in M.P.E.P. § 2143 for each lettered rationale.)

Applicant respectfully submits that the Office Action fails to set forth factual findings showing that each claim element was known in the art or that it would have been obvious to modify or combine the teachings of the cited references to arrive at the claimed invention. For example, claim 1 recites a system for professional development of instructors (not for instruction of students) including providing training to an instructor, and assessing success of the training of the instructor. Such claim elements are not taught by the cited references and the office action

fails to show how one of skill in the art would have found it obvious to modify the teachings of the various references to arrive at the claimed invention.

The art fails to disclose a system for assessing success of said streaming media training independent from student curriculum in improving teaching by said instructor, comprising: testing said individuals according to said measurable standards; and analyzing and correlating results of said testing according to said standards. Siefert merely provides the teacher with a outlined curriculum source and allows the teacher to provide subjective feedback. Under Siefert, a teacher does not receive instructions relating to the teacher's teaching skills, nor are the teaching skills assessed, by testing the student, subsequent to the training to determine the success of the training the teacher has received.

In particular, Siefert discloses in column 15, lines 11-17 and 60-67 that a student who scores below average on any unit would automatically be given a diagnostic check, "this is the second way in which the system can assess lack of prerequisite skills, as well as other problems. The diagnostic check will be in the form of a question, (Did you use the help screen during the unit?) and a menu for the student to choose from: too hard, too easy, not straight forward enough..." Siefert, col. 15, lines 11-17. "Evaluation and revision must be built into the implementation of the system, especially for the first 2 years of use. Both the teacher and the student should evaluate each unit of instruction as completed. The student could have a very short on-screen questionnaire immediately after the unit score is displayed and the teacher could have the option of recording any comments about the content or the design of the unit in light of the student's experience." Siefert, col. 15, lines 60-67. Accordingly, Siefert provides or allows

the teacher and student to provide subjective feedback on their experience with the teaching process. However, Siefert does not disclose, as claimed in the present application, the system for assessing the success of said streaming media training, improving teaching by an instructor comprising testing a student according to measurable standards; and analyzing and correlating results of said testing according to said standards; and printing evaluations of the success of said training by comparing the performance of said student before and after said training, said evaluations to be used by said instructor to modify behavior of said instructor. Thus, while Siefert teaches a computer system for instructing students, Siefert fails to disclose a system for professional development of instructors as claimed in claim 1.

Accordingly, the art does not disclose a system for assessing success of said streaming media training independent from student curriculum in improving teaching by said instructor. Rather, the cited art provides a system that allows both the teacher and student to provide subjective feedback on the curriculum provided to the student. Siefert, col. 15, lines 11-67. For example, the art indicates that a student can provide feedback indicating whether the curriculum was too easy or too hard, not a system that tests the students comprehension or learning relative to an established standard. Siefert, col. 15, lines 17-18. As another example the art teaches a system that allows the teacher and student to provide an evaluation of each unit of instruction as it is completed including a short on-screen questionnaire to record comments about the content or design of the unit in light of that student's experience. Siefert, col. 15, lines 60-67. Accordingly, the art provides a system that allows students and teachers to provide comments

related to their experience with the curriculum, not a system that tests the student's comprehension or learning relative to an established standard.

Siefert discloses a system in which teachers utilize a teacher's guide containing all of the content and resources in the system. The teachers guide containing content and resources provides a teacher with curriculum to provide to the students, but does not provide the teachers with training that teaches teaching skills in accordance with measurable standards of learning. Siefert, Col. 15, Lines 48-50. Siefert's system allows teachers to provide additional assignments from the finite curriculum resources contained in the teacher's guide, allowing the teacher to effectively guide a student through the curriculum available in the teacher's guide, but fails to provide direct training to the teachers providing the teachers with instructions for developing teaching skills. Siefert, Col. 15, Lines 54-60. Accordingly, Siefert fails to disclose deriving assessment data of the professional instructor from the testing of the students; assessing the professional instructor based on that assessment data; and assessing effectiveness of the training the professional instructor received based on student assessment data.

The cited art does not disclose a system for providing Internet based streaming media training independent from student curriculum to a teacher. Rather the art discloses a system that provides a Teacher's Guide, one for each grade level, containing all the content and resources in the system. Seifert, col. 15, lines 48-53. Siefert discloses systems for use in computer-assisted education of students. Siefert, Abstract. Siefert discloses a system utilized to retain curriculum and learning profile information for students. Based on the profile, Siefert's system selects appropriate material for a student during each learning session." Siefert, Abstract. Accordingly,

the cited art disclose a system that provides a teacher with a manual that contains all the information a teacher will need to teach students of a particular grade level. The art does not disclose a system for providing Internet based streaming media training independent from student curriculum to a teacher.

Pellegrino also fails to disclose such a system or the elements not taught by Siefert. Pellegrino is simply relied upon in the Office Action as disclosing providing tools for developing lesson plans. Pellegrino teaches a computer-based teaching system where the teacher prepares customized lessons, and then the lessons are presented by a computer. (Abstract; see also Col. 2 lines 62-65, Col. 3 lines 30-31 and lines 49-52, Col. 26 lines 7-8.) Therefore, in Pellegrino, the teacher does not present the lesson at all. Pellegrino therefore fails to teach the elements of claim 1 of allowing the instructor to teach according to the lesson plan and assessing success of the training in improving the instructor's teaching. Therefore, Pellegrino also fails to teach what is not taught by Siefert, and fails to teach a system for professional development of instructors as recited in claim 1.

The Office Action fails to address how one of skill in the art would have found it obvious to modify the combined teachings of Siefert and Pellegrino to overcome the differences between the cited references and the claimed invention. Therefore, a *prima facie* case of obviousness has not been shown, and the rejection of claim 1 should be removed, along with the rejections of its dependent claims 2-6.

Independent claim 9 includes similar limitations to those discussed above with respect to claim 1, and is therefore similarly allowable. Therefore, claim 9 and its dependent claims 10-11 are allowable for similar reasons to those set forth above with respect to claim 1.

Independent claim 12 includes similar limitations to those discussed above with respect to claim 1, and is therefore similarly allowable with its dependent claims 13-17. Such limitations distinguish the claimed invention from Siefert and Pellegrino for at least the reasons discussed above. Independent claim 18 also includes similar distinguishing limitations. Such limitations distinguish over the cited references, and claim 18 is therefore allowable along with its dependent claims 19-22.

Therefore, as the cited references fail to show all elements of the claim set provided herein and as the Office Action fails to show how one of skill in the art would have found it obvious to modify the references to arrive at the claimed invention, Applicants respectfully request removal of all rejections under 35 U.S.C. § 103(a).

CONCLUSION

Applicant submits the claims are now in condition for allowance and respectfully requests the same. If any impediments to this application remain after consideration of the foregoing amendments and remarks, the Examiners is invited to initiate a telephone conference with the undersigned attorney of record.

DATED this 21st day of March, 2011.

Respectfully submitted,

/Michael F. Krieger/

Michael F. Krieger
Attorney for Applicant
Registration No. 35,232

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
Telephone (801) 321-4814
Facsimile (801)321-4893

JRM/law